

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DUOP DOOR,)	8:11CV390
)	
Plaintiff,)	
)	
v.)	MEMORANDUM
)	AND ORDER
OMAHA POLICE DEPARTMENT,)	
and JOHN D. BAHLE,)	
)	
Defendants.)	

Plaintiff filed his Complaint in this matter on November 16, 2011. (Filing No. [1](#).) Plaintiff was previously given leave to proceed in forma pauperis. (Filing No. [6](#).) The court now conducts an initial review of the Complaint to determine whether summary dismissal is appropriate under [28 U.S.C. §§ 1915\(e\)](#) and [1915A](#).

I. SUMMARY OF COMPLAINT

Plaintiff filed his Complaint in this matter against the Omaha Police Department and Omaha Police Department Officer John Bahle. (Filing No. [1](#) at CM/ECF p. 2.) In the Complaint, Plaintiff alleges that he was arrested at his residence on August 15, 2011, at which time law enforcement officers informed Plaintiff that they had a warrant for his arrest. However, upon later reading the police reports provided to him by his public defender, Plaintiff noted that the police reports stated that “the warrant is awaiting the judge’s approval.” Plaintiff complains that he has yet to see the “alleged warrant” used to arrest him. (*Id.* at CM/ECF pp. 5-6.) Plaintiff seeks \$20,000,000.00 in monetary damages. (*Id.* at CM/ECF p. 7.)

II. APPLICABLE LEGAL STANDARDS ON INITIAL REVIEW

The court is required to review prisoner and in forma pauperis complaints seeking relief against a governmental entity or an officer or employee of a

governmental entity to determine whether summary dismissal is appropriate. *See* [28 U.S.C. §§ 1915\(e\)](#) and [1915A](#). The court must dismiss a complaint or any portion thereof that states a frivolous or malicious claim, that fails to state a claim upon which relief may be granted, or that seeks monetary relief from a defendant who is immune from such relief. [28 U.S.C. § 1915\(e\)\(2\)\(B\)](#); [28 U.S.C. § 1915A](#).

Pro se plaintiffs must set forth enough factual allegations to “nudge[] their claims across the line from conceivable to plausible,” or “their complaint must be dismissed” for failing to state a claim upon which relief can be granted. [Bell Atlantic Corp. v. Twombly](#), 550 U.S. 544, 569-70 (2007); *see also* [Ashcroft v. Iqbal](#), 129 S. Ct. 1937, 1950 (2009) (“A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”). Regardless of whether a plaintiff is represented or is appearing pro se, the plaintiff’s complaint must allege specific facts sufficient to state a claim. *See* [Martin v. Sargent](#), 780 F.2d 1334, 1337 (8th Cir. 1985). However, a pro se plaintiff’s allegations must be construed liberally. [Burke v. North Dakota Dep’t of Corr. & Rehab.](#), 294 F.3d 1043, 1043-44 (8th Cir. 2002) (citations omitted).

III. DISCUSSION OF CLAIMS

Liberally construed, Plaintiff complains that the warrant used to secure his arrest was not valid. However, as set forth by the Supreme Court in [Preiser v. Rodriquez](#), 411 U.S. 475 (1973), and [Heck v. Humphrey](#), 512 U.S. 477 (1994), if success on the merits of a civil rights claim would necessarily implicate the validity of a prisoner’s conviction or continued confinement, the civil rights claim must be preceded by a favorable outcome in habeas corpus or similar proceeding in a state or federal forum. Absent such a favorable disposition of the charges or conviction, a plaintiff may not use [42 U.S.C. § 1983](#) to cast doubt on the legality of his conviction or confinement. *See* [Heck](#), 512 U.S. at 486-87; *see also* [Smith v. Holtz](#), 87 F.3d 108, 113 (3d Cir. 1996) (applying *Heck* to a claim that would implicate the validity of a future conviction on a pending criminal charge).

It is clear from the face of the Complaint that Plaintiff is incarcerated at the Douglas County Correctional Center on pending criminal charges related to his arrest on August 15, 2011. As set forth above, Plaintiff may not bring a civil rights claim at this time challenging the validity of his incarceration. The court will dismiss Plaintiff's claim related to his arrest without prejudice to reassertion in a habeas corpus or similar proceeding.

IT IS THEREFORE ORDERED that: Plaintiff's Complaint (filing no. [1](#)) is dismissed without prejudice. A separate judgment will be entered in accordance with this Memorandum and Order.

DATED this 3rd day of February, 2012.

BY THE COURT:

s/ Joseph F. Bataillon
United States District Judge

*This opinion may contain hyperlinks to other documents or Web sites. The U.S. District Court for the District of Nebraska does not endorse, recommend, approve, or guarantee any third parties or the services or products they provide on their Web sites. Likewise, the court has no agreements with any of these third parties or their Web sites. The court accepts no responsibility for the availability or functionality of any hyperlink. Thus, the fact that a hyperlink ceases to work or directs the user to some other site does not affect the opinion of the court.